

## **TITLE 15. BOARD OF PRISON TERMS**

### ***STATEMENT OF EMERGENCY***

**RN 04-04**

#### ***POSTPONEMENTS, CONTINUANCES, AND STIPULATIONS OF UNSUITABILITY***

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend Title 15 (Division 2), California Code of Regulations (CCR) section (§) 2253.

#### **AUTHORITY**

These regulations are submitted pursuant to the Board's authority under Penal Code §§ 3052 and 5076.2.

#### **REFERENCE**

These regulations are amended to implement, interpret, and/or make specific, Penal Code §§ 1170.2 and 3041.5.

#### **FINDING OF EMERGENCY**

The Board finds that its emergency order amending the above regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

The federal court in *Valdivia v. Schwarzenegger* [U.S.D.C. E.D. Cal. Case No. Civ. S-94-0671 LKK/GGH] (*Valdivia*) determined that the Board violated inmate and parole constitutional rights by failing to hold timely parole revocation hearings. The Board determined that the instant regulatory action, by providing procedures and opportunities for more postponements, continuances, and stipulations would accommodate inmates and parolees who desired a delay in their hearings. Rescheduling those hearings to later times will free resources and ameliorate delays for those who desired a timely hearing. Thus, emergency action on this regulation is necessary to afford constitutional protections to those who desire a timely hearing. Since some of those who have these timely hearings will have the charges they face reduced, be given time served, or found innocent, their liberty interests in being free of incarceration are being advanced by the regulation amendments.

#### **Background**

On July 23, 2003, the federal court in *Valdivia* ordered that the Board and the Department of Corrections (CDC) either submit a remedial plan or comply with the court's other orders. The plan submitted to the court, hereafter known as the *Valdivia* Remedial Plan (VRP), creates a significant new workload and a shift of the parole revocation process from CDC to the Board. On December 1, 2003, Justice Karlton issued the "Stipulated Order for Permanent Injunctive

Relief,” which accepted the proposed VRP. This last order requires that the policies substantially revamping parole revocation be completed and filed with the court by July 1, 2004. The State is required to attend periodic status conferences describing its progress in implementing these massive changes. The March 1, 2004 conference included discussion concerning the pending changes, and the timing of their becoming effective.

The changes to the revocation system, i.e., staffing, supervision, and budget require immediate action on numerous policies, including this regulation package. The expansion of continuances to include postponements and stipulations streamlines the hearings system by reducing hearings scheduled for times when the inmate or parolee desires a later time, and which may become unnecessary due to pending judicial proceedings. Fairness requires that the Board hold timely hearings for all inmates and parolees that desire that constitutional right. Fairness also requires that any right offered inmates and parolees in one type of hearing be also available to those facing other types of Board hearings to the extent such is compatible with the nature of the proceedings and external constraints.

It would not be feasible for the Board to promulgate, nor for the public to comment and the Board to consider comments on every aspect of this complex plan at any one time. Therefore, this regulation package comes after the initial group of changes. The Board contemplates that additional packages will be issued in groups approximately monthly. This coincides with its monthly public Board meetings where the formal adoptions take place.

The Board has determined that the efficiencies necessary to meet the mandate of *Valdivia* cannot be met unless existing processes are streamlined and redundant functions eliminated. The Board has considered but declined to implement a number of alternatives it deems to be less satisfactory in addressing the above legal issues. The main alternative to implementation of the VRP is reneging on the settlement agreement and accepting the court’s original July 23, 2003 order. The Board estimates that the cost of compliance with that earlier order is in the range of \$100 million. Another alternative is that the State delay implementation of some or all of the VRP in order to save money. The danger is that the State, and its elected and appointed officials, may be held in contempt of court or fined. Eventually, the federal court could appoint a Special Master to run California’s parole revocation system. These options would likely be the most costly, with the State losing almost all control of both public safety and finances. The last option—elimination of parole—would have a significant impact on public safety; it would require formal enactments by the California Legislature. Given the onerous or speculative alternatives, immediate action on the proposed regulations is a necessary part of defending the State from these significant perils. In summary, the Board has determined that no reasonable alternative identified or considered would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed regulatory action.

Some aspects of restructuring the Board’s programs also result from the dire State budget deficits. While the Governor’s latest proposals in January 2004 reduced the Board’s total budget over 15% from FY 2002-2003 levels, certain fixed costs necessitated disproportionate staffing reductions. While essential functions mandated by law must be delivered, the form and manner in which services are delivered remains in flux. Facilitating continuances, postponements and stipulations will avoid some multiple or unnecessary hearings, thus using resources more efficiently. In terms of economic impact on the public, the Board notes that no cost impacts on a

representative private person or business would result from the proposed action. The forthcoming “Notice of Proposed Action” will discuss in detail the cost impacts of this regulatory action matters.

The Board intends that these amendments take effect as soon as possible on an emergency basis, until made permanent under appropriate procedures. Given the time frames imposed under the *Valdivia* Order, the regular process for adopting regulations under the Administrative Procedure Act would not be sufficient or effective.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public, a compendium of its rules and regulations.

The existing regulation, CCR § 2253, provides a process for prisoners and parolees to request a continuance either before or during their hearing.

The Board proposes to amend the current regulation concerning hearing continuances for the reasons addressed above in the Statement of Emergency.

## LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

## FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630:  
*None*
- Cost or savings to any state agency:  
*The Board estimates that it will not incur any net cost or savings in the current fiscal year, Fiscal Years 2004-2005 or 2005-2006, and successive Fiscal Years.*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*